IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2007

CORAM

THE HONOURABLE MR. JUSTICE K. RAVIRAJA PANDIAN
AND
THE HONOURABLE MRS. JUSTICE CHITRA VENKATARAMAN

TAX CASE (APPEAL) NO. 1462 OF 2007

Commissioner of Income Tax
Chennai. ... Appellant

Vs.

M/s. Tarapore & Co
No.827, Anna Salai
Dhun Building
Chennai - 600 002. ... Respondent

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against ITA.No.2753/Mds/2004, dated 25.1.2007 by the Income Tax Appellate Tribunal, Madras 'C' Bench against the order dated 17.8.2004 on the file of the Commissioner of Income Tax (Appeals) IX order in ITA.No.66 / 2003-2004 u/s 271 (1) (C) against the order dated 4.3.2004 on the file of the Commissioner of income Tax (Appeals) IX order in ITA. NO.66/03-04 u/s 143 (3) as against the assessment order of the Assistant Commissioner of Income Tax , Circle VII, Chennai dated 31.3.2003 in PAN/GI No.51318-1.

J U D G M E N T

(Judgment of the Court was made by K. Raviraja Pandian, J.)

This appeal is filed against the order of the Income Tax Appellate Tribunal in I.T.A.No.2753/Mds/2004, dated 25.1.2007. The assessment year is 2000-2001.

2. The appellant is a partnership firm doing civil engineering contracts and hotel business. For the assessment year 2000-2001, the assessee admitted income from service charges amounting to Rs.48,71,536/- under the head income from the house property. In the earlier years, this income was assessed under other sources and the same has been confirmed by the Income Tax Appellate Tribunal. Therefor,e the Assessing Officer imposed the penalty under Section 271(1)(c) of the Income Tax Act. The Commissioner of Income Tax

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(Appeals) while adjudicating the assessee's appeal against the assessment order, upon hearing the assessee's explanation that the assessee had filed a reference application before the High Court and therefore, the assessee had a bona-fide belief that its claim for service charges should not be taxed as income from house property. Accepting the assessee's explanation, the Commissioner of Income Tax (Appeals) dropped the penalty proceedings on the ground that the assessee had admitted income from the service charges and there is no deliberate and malicious conduct on the part of the assessee for speculation of the Act. Aggrieved by the said order of the Commissioner of Income Tax (Appeals), an appeal was filed before the Income Tax Appellate Tribunal and the Tribunal confirmed the order of the Commissioner of Income Tax (Appeals). Hence the present appeal at the instance of the Revenue by formulating the question of law with the following effect:-

> " Whether, in the facts and circumstances of the case, the Tribunal was right in holding that no penalty under Section 271(1)(c) was leviable in this case, as the assessee had challenged the Tribunal's order on merits for the earlier years by filing a Reference application before this Court, when such reference had been dismissed even before passing of the assessment order?"

3. We heard the arguments of the learned counsel for the Revenue.

4. The only contention that has been raised by the learned counsel for the Revenue is that even after the disposal of the case against the assessee in the reference application, the assessee has not brought to the same to the notice of the authorities concerned while framing the assessment for the year 2000-01. The ultimate fact finding authority has recorded a finding to that effect that the assessee had made a reference against the decision of the Tribunal before the High Court and therefore, the assessee had a bona fide belief that its claim for service charges should not be taxed as income from the house property. All the particulars regarding the service charges were duly furnished along with the return. Therefore, it could not be said that the assessee had furnished inaccurate particulars of income or concealed its income. The Commissioner of Income Tax (Appeals) in his order has extracted the letter of the assessee dated 12.8.2004, and also recorded a finding that all the particulars were available in the file and that the appellant stated that it had not made any deliberate attempt on its part to conceal the particulars of income and that it had cooperated in agreeing with the view of the Department after Tribunal and the High Court order and also paid the taxes. The Commissioner of Income Tax (Apeals) also recorded a finding to the

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effect that there was no deliberate and melicious conduct of cealing the income and the reason offered by the assessee was acceptable.

5. When that being the factual position, we are not able to take a different view than the one taken by the statutory authorities under the Act and also the Tribunal. Useful reference can be made to the judgement of the Supreme Court in T. ASHOK PAI VS. COMMISSIONER OF INCOME TAX reported in (2007) 292 ITR 11. Hence, the tax case appeal is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kb

1. The Assistant Registrar,
Income Tax Appellate Tribunal
Rajaji Bhavan, Besant Nagar, Chennai.

2. The Commissioner of Income Tax
Chennai.

3. The Commissioner of Income Tax (Appeals)IX
121, Mahatma Gandhi road, Nungambakkam,
Chennai-34.

4. The Assistant Commissioner of Income Tax
Circle VII, Chennai.

1 cc to M/s. Pushya Sitaraman, Advocate, Sr. 71342

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